IN THE HIGH COURT OF BOBAY AT GOA

MISC. CIVIL APPLICATION NO. 532/2005 IN
WRIT PETITION NO. 471/04
WITH
MISC. CIVIL APPLICATION NO.93/06 IN
WRIT PETITION NO. 472/04

MISC. CIVIL APPLICATION NO. 532/2005

Suresh Rauji Dabholkar,
major, married, carpenter,
r/o. Dabhol Vaddo,
Anjuna, Bardez, Goa. ..... Applicant.

V/s.

1. Smt. Sitabai Ramrao Shirodkar,
   widow of Ramrao Shirodkar,
   major, housewife,

2. Shri Vardhaman Ramrao Shirodkar,
   s/o. Ramrao Shirodkar,
   major, married, tailor,

3. Shri Gajanan Ramrao Shirodkar,
   s/o. Ramrao Shirodkar,
   major, married, service,

4. Shri Vijaykumar Ramrao Shirodkar,
   s/o. Ramrao Shirodkar, major,
   married, service,
   all r/o. Huddo Vaddo,
   Anjuna, Bardez, Goa. ..... Respondents.

MISC. CIVIL APPLICATION NO.93/06

Smt. Sughandha Suresh Dabholkar,
major, married, housewife
r/o. Dabhol Vaddo,
Anjuna, Bardez, Goa. ..... Applicant.

V/s.

1. Smt. Sitabai Ramrao Shirodkar,

widow of Ramrao Shirodkar,
major, housewife,

2. Shri Vardhaman Ramrao Shirodkar,
s/o. Ramrao Shirodkar,
major, married, tailor,

3. Shri Gajanan Ramrao Shirodkar,
s/o. Ramrao Shirodkar,
major, married, service,

4. Shri Vijaykumar Ramrao Shirodkar,
s/o. Ramrao Shirodkar, major,
married, service,
all r/o. Huddo Vaddo,
Anjuna, Bardez, Goa. ..... Respondents.

Shri S. M. Volvoikar, Advocate for the applicants.

Ms. C. Fernandes, Advocate for the respondents.

CORAM : R.M.S. KHANDEPARKAR, J.

DATE : 24TH FEBRUARY, 2006.

ORAL ORDER :

Heard Advocates for the parties. Since common question of law and the facts arise in both these applications and the same arise from similar order passed in two writ petitions No. 471/04 and 472/04 heard together both these applications and are being disposed of by this common order.

2. By the present applications, the applicants are seeking

modification of Order dated 29.4.2005 passed in Writ Petitions No.471/04 and 472/04 to the extent of deletion of direction for payment of costs of Rs.5,000/- each by the applicants to the respondents on the ground that this Court having arrived at the conclusion that there was no case made out for interference in the order passed by the lower appellate Court and had dismissed the writ petitions, therefore, it could not have directed payment of costs on account of condonation delay in filing appeal granted by the lower appellate Court. Reliance in that respect is placed in the decision in the matter of **G.E. Power Controls India and ors. v. S. Lakshmipathy and ors.** Reported in (2005) 11 SCC 509.

3. By order dated 18/7/2001, the lower appellate Court had condoned the delay in filing the appeals. They were filed by the applicants herein. There was a delay of almost 3 years in filing the appeal. However, the lower appellate Court, by a reasoned order had condoned the said delay. The said orders condoning the delay was sought to be challenged by the respondents by filing Writ Petitions No. 471/05 and 472/05 which came up for hearing on 29th April, 2005. Upon hearing the Advocate for the respondents herein, the learned Single Judge of this Court being satisfied that the lower appellate Court had exercised the discretion judiciously in the matter of condonation of delay, refused to interfere in the order of condonation of delay. However, while observing that since the delay was

condoned, it was incumbent upon the lower appellate Court to award costs in favour of the respondents herein, directed payment of costs of Rs.5,000/- each by the applicants herein. It is to be noted that the matter was disposed of at the stage of admission itself without issuing any notice to the applicants herein who were the respondents in the said writ petitions. In the facts and circumstances of the case, therefore, the applicants are justified in contending that there was no opportunity for the applicants to place before this Court the contentions which are now sought to be raised in these applications.

4. Besides, the Apex Court has ruled that in exercise of powers under Article 227 of the Constitution, when the High Court arrives at the finding that the petition is meritless or does not call for interference in the impugned order, and on that count proceeds to dismiss the petition, the question of grant of any relief as such against any party cannot arise. That is the law laid down by the Apex Court right from 1952 in the case of **State of Orissa v. Madan Gopal Rungta,** reported in 1952 SC 12, and reiterated from time to time including the decision in the matter of **S. Lakshmipathy and ors.** (supra). Being so, the applicants are justified in in contending that that there is error apparent on the face of the record in directing payment of costs by the applicants in favour of the respondents herein under Orders dated 29th April, 2005 and the

orders need to be modified by deleting the direction of payment of costs of Rs.5,000/- each. Accordingly, the applications are allowed and the Orders dated 29th April, 2005 in Writ Petitions No.471/05 and 472/05 stand modified accordingly. The direction as regards payment of costs of Rs.5,000/- each by the applicants, stands deleted. The applications stand disposed of.

R.M.S. KHANDEPARKAR, J.

ssm.